

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|-------------------------------------|---|-------------------------------|
| In the Matter of |) | |
| |) | File No. BRED-20040128ACQ |
| JOHN BROWN UNIVERSITY |) | Facility ID No. 31470 |
| |) | FRN 0007719222 |
| for Renewal of License of KLRC(FM), |) | NAL Account No. MB20041810037 |
| Siloam Springs, Arkansas |) | |

FORFEITURE ORDER

Adopted: February 12, 2009

Released: February 13, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seven thousand two hundred dollars (\$7,200) to John Brown University (“JBU”), licensee of KLRC(FM), Siloam Springs, Arkansas, for its willful and repeated violation of Section 73.3527 of the Commission's Rules (“*Rules*”)¹ by failing to properly maintain a public file for KLRC(FM).

II. BACKGROUND

2. On January 28, 2004, JBU filed an application to renew the license of KLRC(FM).² Section III, Item 3, of the license renewal application form, FCC Form 303-S, inquires whether the documentation required by Section 73.3526 or 73.3527 of the Rules, as applicable, has been placed in the station's public inspection file at the appropriate times. JBU responded “No” to that inquiry. On June 4, 2004, JBU filed an amendment stating “the complete issues/program lists for station KLRC were not placed in the public file from January 10, 1999, (the first quarter in the new license term) through January 10, 2003.”³ On June 28, 2004, the Bureau released a letter decision granting the captioned license renewal application and issuing a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of nine thousand dollars (\$9,000) to JBU for willfully and repeatedly violating Section 73.3527 of the Commission's Rules.⁴ JBU filed a Request for Reduction of Proposed Forfeiture (the “Request”) on July 28, 2004.⁵ JBU asserts that a forfeiture reduction is warranted because of its history of compliance with the Commission's Rules,⁶ and because it had made a “good faith effort” to comply with Section 73.3527. It argued that the \$9,000 forfeiture was disproportionate to forfeitures issued in what JBU characterized as more egregious cases,⁷ and that “recent precedent” indicated that a \$3,000 forfeiture would be more appropriate to JBU's offense.⁸ In its Amendment, JBU attributed the violation to the fact that “the station is a student-staffed

¹ 47 C.F.R. § 73.3527.

² JBU filed an amendment to the application on June 4, 2004 (the “Amendment”).

³ Application, as amended, Ex. 1.

⁴ See *John Brown University*, Letter, 19 FCC Rcd 11246 (MB 2004).

⁵ Request for Reduction of Proposed Forfeiture, July 28, 2004.

⁶ Request at 3, 5.

⁷ See *id.* at 3-4.

⁸ See *id.* at 4-55

educational radio station [and] during the license period, several different faculty members and students were responsible for maintaining the station's local public file.⁹

III. DISCUSSION

3. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,¹⁰ Section 1.80 of the Rules,¹¹ and the Commission's *Forfeiture Policy Statement*.¹² In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹³

4. JBU's decision to delegate public file compliance responsibilities to several different faculty members and students does not excuse its Rule violation. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees excuse or nullify the violation.¹⁴ We note that JBU maintained some of the items required for the issues/program lists. That, however, does not change the fact that JBU has conceded that the information was incomplete and not available to the public on a timely basis.¹⁵

5. We have considered JBU's assertion of its "impeccable" prior compliance with the Rules and note that, in a recent, similar circumstance,¹⁶ we reduced a forfeiture from \$9,000 to \$7,200. Accordingly, we are not persuaded by JBU's argument concerning lesser forfeitures that may have been imposed on licensees who, JBU asserts, were equally or more guilty of Rule violations.

6. We conclude that JBU willfully¹⁷ and repeatedly¹⁸ violated Section 73.3527 of the Rules. However, given JBU's history of compliance with the Rules while licensee of KLRC(FM), we reduce the forfeiture amount to \$7,200.¹⁹

⁹ Amendment, Ex. 11.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999).

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ See, e.g., *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

¹⁵ JBU included with its Request an extensive number of documents related to issues identified and programs addressing those issues during the license term. See Request, Attachment A. It concedes, however, that many of the documents did not include the "specific time, date, and duration" of programs, and that "it was not clear that the information was placed in the stations' respective local public inspection files on a timely basis." Request, Ex. 1, Declaration of Sean Sawatzky.

¹⁶ *Christian Center, Inc.*, Forfeiture Order, ___ FCC Rcd ___ (MB 2009) (DA No. 09-140, rel. Jan. 23, 2009) ("*Christian Center*") (forfeiture reduced from \$9,000 to \$7,200 based on licensee's record of Rule compliance, where twelve issues/program lists were missing from the public file).

¹⁷ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,²⁰[FN13] that John Brown University SHALL FORFEIT to the United States the sum of seven thousand two hundred dollars (\$7,200) for willfully and repeatedly violating Section 73.3527 of the Commission's Rules.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²¹ Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).²²

9. IT IS FURTHER ORDERED, that a copy hereof shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Patricia Gustavson, Vice President for Finance, John Brown University, 2000 West University Street, Siloam Springs, AR 72761 and to its counsel, James P. Riley, Esq., Fletcher Heald and Hildreth, 11th Floor, 1300 North 17th Street, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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¹⁸ Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

¹⁹ *See, e.g., Christian Center, supra; Claro Communications, Ltd.*, Forfeiture Order, 23 FCC Rcd 359, 362 (EB 2008) (reducing forfeiture amount based on licensee's history of compliance); *Traffic Control Products of Florida Inc.*, Forfeiture Order, 23 FCC Rcd 5452, 5454 (EB 2008) (same). *See also* 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

²⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

²¹ 47 U.S.C. § 504(a).

²² *See* 47 C.F.R. § 1.1914.